

APPEAL NO. 171009

FILED JUNE 16, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 29, 2017¹, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to a right ankle late effect tendon injury, a right ankle late effect sprain/strain, a right talus fracture, or a right lateral malleolus fracture; (2) the date of maximum medical improvement (MMI) is December 12, 2015, as certified by the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, (Dr. W); and (3) the appellant's (claimant) impairment rating (IR) is one percent as assigned by Dr. W.

The claimant appeals the hearing officer's extent of injury, MMI and IR determinations as being contrary to the evidence and argues that he has not attained MMI. The respondent (carrier) responded, urging that the hearing officer's determinations are supported by the preponderance of the evidence.

DECISION

Affirmed as reformed.

The claimant testified that he was injured on (date of injury), when he attempted to avoid being struck by a large rolling rock by stopping the rock with his left foot. He experienced pain and swelling in his left ankle and was eventually diagnosed with a left talus fracture. Thereafter, the claimant was diagnosed with the disputed conditions which, he claims, are related to the accepted left talus fracture.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); that the carrier has accepted as compensable a left talus fracture and that the Division-appointed designated doctor, Dr. W, certified that the claimant reached MMI on December 12, 2015, with a one percent IR.

¹ We note that in her Decision and Order, the hearing officer incorrectly lists the date of the CCH as March 29, 2016.

In evidence is a Report of Medical Evaluation (DWC-69) dated March 3, 2016, from Dr. W certifying MMI on December 23, 2015, and assigning an IR of one percent. There is no other DWC-69 in evidence certifying that the claimant has reached MMI.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to a right ankle late effect tendon injury, a right ankle late effect sprain/strain, a right talus fracture, or a right lateral malleolus fracture is supported by sufficient evidence and is affirmed.

MMI/IR

Throughout her Decision and Order, including the Discussion section, the Decision section, Findings of Fact, Conclusions of Law, and the first paragraph of the Decision and Order, the hearing officer incorrectly lists December 12, 2015, as the date of MMI certified by Dr. W and adopted by the hearing officer when, in fact, Dr. W actually certified MMI on December 23, 2015. We agree with the hearing officer that the certification of MMI and assignment of IR from Dr. W is supported by the evidence and may be adopted. We accordingly reform all references to a December 12, 2015, date of MMI in the Decision and Order, including the stipulation of the parties contained in Finding of Fact No. 1 E., to the date of MMI on December 23, 2015.

The hearing officer's determination that the claimant's IR is one percent is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to a right ankle late effect tendon injury, a right ankle late effect sprain/strain, a right talus fracture, or a right lateral malleolus fracture.

We affirm the hearing officer's determination that the claimant's IR is one percent.

We affirm as reformed the hearing officer's determination that the claimant reached MMI on December 23, 2015.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge